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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/350,474	07/09/1999	WILLIS L. WINSTROM	POC-99-1-1	8187

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SUITER & ASSOCIATES, PC  
14301 FNB PARKWAY  
SUITE 220  
OMAHA, NE 68154-5299

EXAMINER
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LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

23

DATE MAILED: 01/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

09

Application No.

850474

Applicant(s)

WINSTON et al

Examiner

NEIL C. GUY

Group Art Unit

23

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 10/2/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-10, 57-75, 77-85, 87, 99-103 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-10, 57-75, 77-85, 87, 99-103 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☒ Claim(s) 1-10, 57-75, 77-85, 87, 99-103 are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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Receipt is acknowledged of amendment of 10/21/02.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 2, 4, 8, 57, 58, 60, 66-68, 70, 77-79, 81, 85, 87, 99-103 are rejected under 35 U.S.C. 102(b) as being anticipated by Forberg et al DD 138273.

Up dated search discloses the instant invention as claimed, @ Forberg, as at example 2, Page 7. Here is about 280g/pound of Turimycin prepared by culturing and drying, and with, if desired (see claim 1, page 8), added antibiotic, admixed with edible feed – fodder yeast. Added feed – soy meal (claim 3) is disclosed. Granulating, and medicinal fodder formation is at page 5. Added mineral fodder is at page 6 as fluidized bed drying was used, the resultant granulates would be of substantially uniform size, although sizing was not specified. The independent claims are met by this reference, although the elected tetracycline's were not mentioned, and, as indicated specific sizing or screening was not indicated, although this detail is seen as satisfied as one object was dustless, stable granules. No patentable weight is afforded the process of making the claimed compositions (claim 66, 77, 87).

Claims 1-6, 8, 57-75, 87, 100-103 are rejected under 35 U.S.C. 102(b) as being anticipated by Klethern-4447421.

The rejection of record is maintained. Instant claims are to a granulate made up of 2% to 67% or 10 to 300 grams of antibiotic/pound of fermentation solids. Klothern provides chlorite. Ca complex at 10-25% of 25-35% fermentation solids, or 7%, or 35g/pound (col. 3, lines 33-42) with whey with minerals (line 41-48, col. 3). The oil mineral

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and Soy oil, is shown at Table II, of a non-compacted formulation g/Rb is 25. The oil is in the premix; no patentable weight is given as to the process of getting it there, in the composition of chlortetracycline with fermentation solids, and oils, whey. This meets claim 1.

Claims 1-10, 57-75, 77-85, 87 and 99-103 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klothern 4447421 view of King-5266347 or Forberg et al DD 138273.

Klothern discloses the instant inventive compositions, medicated premixes of chlor or oxy Tetracycline antibiotics at antibiotic effective levels, as components of fermentation solids for the production process. The stabilizing and standardizing components are identified in general, but not all such forms as are instantly claimed are presented. These are art known, and not of the inventive concept. However, King also provides the same antibiotics, ferment produced, and shows these art recognized compatible additives.

Forberg is shown as indicative of known use of added antibiotic, to achieve desired level of potency. There is no unobvious and/or unexpected results obtained since the prior art is well aware of the use of specific additives minerals, rice hulls, oils, as carriers, feed premix and supplement ingredients and other adjuvants common to the art as a means of premix formulation and the use ingredients for the functionality for which they are known to be used is not a basis for patentability.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, desiring to utilize antibiotic compositions to use one of Klothern,

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modified as shown by King to include specific feed ingredients as are available and known in the art, in order to provide cost effective antibiotic premixer or modified by Forberg, to increase potency:

Applicant's arguments filed on 10/21/02 have been fully considered but they are not persuasive. Applicant's arguments have been considered in the new and retained rejections in response to amendment. Re-consideration has resulted in dropping the 112 rejection. The antibiotic added is the same as that of the initial ferment, but the form is seen as in varied stages of clarification from filtrate (claim 81) through crystals (claim 85). As to art rejections; King does not precede the concentrated product required of an antibiotic effective potency, but does show every other aspect of the claimed invention. If one were to enhance the potency, for antibiotic, rather than growth enhancing efficacy, one would do so as shown by Klothern, and would incorporate the King ingredients in that product. Applicant's teaching away proviso is contrary to Klothern's findings of antibiotic efficacy; thus, King is still a valid reference for the demonstration of the common carriers and components one would mix with antibiotic ferments. Examiner thus respectfully disagrees with applicant's position, that King is not appropriate, and also, that Klothern is ineffective. Klothern provides 2 forms of the claimed instant invention; standard non-compact, and Klothern's inventive compacted form. Both utilize the instant amount of tetracycline/# of solid ferment, combined then with a feed or/and mineral component(s). Thus, as presented, we see no difference in inventions here, in Klothern or in Forberg. The claimed differences are seen as well within the purview of one in the art to provide, in accord with standard practice.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703)308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/LR  
January 10, 2003



NEIL S. LEVY  
PRIMARY EXAMINER